

# ARKANSAS SUPREME COURT

No. CR 05-317

NOT DESIGNATED FOR PUBLICATION

JEFFERY SCOTT RATCHFORD  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered April 20, 2006

APPEAL FROM THE CIRCUIT COURT OF  
BENTON COUNTY, CR 2001-1011-2, HON.  
DAVID S. CLINGER, JUDGE

AFFIRMED

## PER CURIAM

A jury found Jeffery Scott Ratchford guilty of rape of a person less than fourteen years old and two counts of sexual assault in the first degree. He received a sentence of life imprisonment on the rape charge and ten years' imprisonment on each of the sexual assault counts to be served concurrently. We affirmed. *Ratchford v. State*, 357 Ark. 27, 159 S.W.3d 304 (2004).

Subsequently, appellant Ratchford filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition, and appellant lodged an appeal in this court. We remanded the matter to the trial court to make a determination regarding the authenticity of appellant's signature on the Rule 37.1 petition based on the State's contention that appellant's petition was not properly verified. *Ratchford v. State*, CR 05-317 (Ark. February 23, 2006) (*per curiam*).

The trial court held an evidentiary hearing and made a factual finding that appellant authorized his attorney to sign appellant's name on the petition, but that the petition does not contain appellant's authentic signature. As we previously stated, Ark. R. Crim. P. 37.1(d) requires that the petition be verified and that an unverified petition may not be filed without leave of the court. *Morris v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (February 2, 2006) (*per curiam*); *Shaw v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (June 30, 2005) (*per curiam*). The verification requirement for a petition

seeking postconviction relief is of substantive importance to prevent perjury. *Boyle v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (May 5, 2005) (*per curiam*); *Knappenberger v. State*, 278 Ark. 382, 647 S.W.2d 417 (1983). In order to serve this purpose, a petitioner must execute the verification, and if the petitioner is represented by counsel, counsel may not sign and verify the petition for him. *Boyle*, \_\_\_ Ark. at \_\_\_, \_\_\_ S.W.3d at \_\_\_. The underlying purpose is not served where counsel verifies the petition on behalf of his client. *Id.*

Prior to our decision in *Boyle*, this court stated that postconviction relief as sought through a petition under Rule 37.1 “requires that the petitioner be in custody and that the petition be verified *by the petitioner.*” *Westbrook v. State*, 286 Ark. 192, 197, 691 S.W.2d 123, 125 (1985) (*emphasis supplied*). Thus, *Boyle* merely confirmed a position already announced by this court that has long been the rule of law in this state.<sup>1</sup>

Explicitly in *Boyle* and implicitly in prior rulings, this court has recognized that an attorney may not sign a Rule 37.1 verification on behalf of his client even when the petitioner affirmatively authorizes his counsel to do so. Here, the trial court found that although appellant authorized his attorney to sign appellant’s name on the petition, the petition did not contain appellant’s signature as required by Rule 37.1. Therefore, we cannot address the merits of appellant’s petition because it was not properly verified as required by Rule 37.1(d).

Affirmed.

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<sup>1</sup>See *In re: Arkansas Rules of Criminal Procedure, Rule 37.1* (February 2, 2006) (*per curiam*). Therein, we set out specific language in an affidavit that will be required to accompany a petition pursuant to Rule 37.1, effective March 1, 2006. This amendment reinforces our requirements under Rule 37.1.